RAM SINGH HAZURA SINGH

v.

BRIGHT STEEL SDN. BHD.

SUPREME COURT, KUALA LUMPUR
LEE HUN HOE CJ (BORNEO)
WAN SULEIMAN SCJ
WAN HAMZAH SCJ
[CIVIL APPEAL NO. 434 OF 1986]
16 OCTOBER 1987

LABOUR LAW: *Employment - Claim by employee - Employee provided with accomodation - Informal understanding that employee will guard employer's factory at night - Whether employee worked overtime.*

This was an appeal against the decision of the High Court which held that the appellant had not proved his claim against the respondent. The appellant was employed by the respondent in 1976 and he was dismissed in 1985. He was provided with accommodation with the understanding that he would keep an eye on the respondent's factory at night. The terms of employment were informal. The appellant did not claim overtime wages prior to his dismissal. He filed a claim for RM213,939.87 with the labour office. The labour officer found that the appellant had worked 20 hours a day for 9 years based on a record kept by the appellant's daughter covering a period of 4 days in 1985 of lorries coming in and out of the factory. The maker of the report was not called.

Held:
The appellant did not adduce sufficient evidence to prove his claim. The report by his daughter was hearsay evidence as the maker was not called.

[Appeal dismissed with costs.]

Case referred to:
Bonham-Carter v. Hyde Park Hotel Ltd. [1948] lxiv TLR 177

Legislation referred to:
Employment Act 1955, s. 60A(8)

For the appellant - Kevin G. Danker; M/s. Zain & Co.
For the respondent - C. V. Das; M/s. Shook Lin & Bok

JUDGMENT

Lee Hun Hoe CJ (Borneo):

The appellant was employed in 1976 and provided with accomodation. Until his dismissal in 1985 he had never made any claim for overtime against the respondent. The terms of his employment were rather informal. He was provided with accomodation with the understanding that he kept an eye on the factory after office hours. His mere presence would act as a deterrent.

He claimed RM213,939.87. This is a staggering claim. He tried to show that he was on call round the clock. He is an illiterate. He relied on a record kept by his daughter (C1) covering a period of 4 days in 1985 of lorries coming in and out of the factory in a claim for a period of 9 years. This record was admitted by the Labour Officer without the maker being called.

Evidence shows the appellant's wife used to help him in his work, e.g. whenever he slept or occupied elsewhere. The Labour Officer never differentiated between work done by the appellant and his wife. The appellant could not claim for work done by his wife.

The respondent contended that the nature of the appeallant's work involved long hours of inactivity or standby employment and by virtue of s. 60A(8) of the Employment Act 1955 the respondent was not obliged in law to pay for such work as claimed. The Labour Officer did not consider this.

While we appreciate that the proceedings before the Labour Officer was rather informal, nevertheless we expect the Labour Officer to act fairly, justly and impartially. The way he dealt with the matter made him appeared to be crusador rather than acting judicially. No reasonable tribunal would find that appellant worked for 20 hours a day for 9 years on the evidence before the tribunal.

Even though the procedure is informal it is inconceivable that the Labour Officer would act on hearsay evidence. The application of the principle of natural justice does not mean that the Labour Officer could act on what is not evidence. It is, therefore, not surprising that the learned Judge found that the evidence before the Labour Officer was unsatisfactory.

One is reminded of the words of Lord Goddard in *Bonham-Carter v. Hyde Park Hotel Ltd.* [1948] lxiv TLR 177:

> On the question of damages I am left in an extremely unsatisfactory position. Plaintiffs must understand that if they bring actions for damages it is for them to prove their damage; it is not enough to write down the particulars, and, so to speak, throw them at the head of the Court, saying: 'This is what I have lost; I ask you to give me these damages.' They have to prove it. The evidence in this case with regard to damages is extremely unsatisfactory.

This was what happened to the present case. The learned Judge had found the evidence unsatisfactory. We agree with him. On the evidence we have no doubt whatsoever that the appellant had not proved his case on the balance of probabilities. We see no reason to interfere with the learned Judge's finding. We dismiss the appeal with costs. Deposit to respondent on account of taxed costs.

Also found at [1988] 2 CLJ 16